

SECTION 6

THIRD PARTY SALES AND TRANSFERS

6.1. For purposes of this Supplement, Section 11 (Sales to Third Parties) of the PMOU is hereby superseded and replaced in its entirety by the following provisions.

6.2. The Participants will not sell, transfer title to, disclose, or transfer possession of Foreground Information, jointly acquired or produced MIDS-LVT Equipment, or any MIDS-LVT Equipment that was jointly developed by the Participants to any Third Party without the prior written consent of the other Participants. Furthermore, no Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participants. Such consent will not be given unless the government of the intended recipient agrees in writing that it will not:

6.2.1. Retransfer, or permit the further transfer of, any equipment or information provided; nor

6.2.2. Use, nor permit the use of, the equipment or information provided for the purposes other than those specified by the Participants.

6.3. A Participant will not sell, transfer title to, disclose, or transfer possession of MIDS-LVT Equipment or Background Information provided by another Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

6.4. Consent for Third Party sales and transfers of Foreground Information, jointly acquired or produced MIDS-LVT Equipment or any MIDS-LVT Equipment that was jointly developed by the Participants will not be withheld except for reasons of foreign policy, national security, or national laws. No Participant will refuse approval of a sale or transfer to a Third Party when it would be willing to sell or transfer such equipment or information to the same Third Party.

6.5. The Host Nation will be responsible for contracting for those Third Party Sales that are conducted on a government to government basis for the duration of this Supplement 3. The IPO will be responsible for the coordination of MIDS program activities related to Third Party sales made on a government-to-government basis by the Host Nation and will cooperate with the Contracting Officer in the area of contract procedures, contract negotiation, evaluation of offers, and contract award. The configuration management systems will be maintained for the needs of the Participants by the IPO, which will take into account all Third Party sales.

6.6. It is the intent of the Participants to foster the highest level of interoperability and supportability of all Link 16 users. To that end, the SC, through the IPO, will use its best efforts to encourage Third Parties to obtain their Link 16 system requirements with the MIDS-LVT Equipment, with a preference to satisfy those requirements via contracts under the auspices of the IPO.

6.7. On all sales or transfers of new production MIDS-LVT Equipment to a Third Party, the Participant or Contractor entering into an agreement for such sale or transfer will include in its selling price for such MIDS-LVT Equipment a levy to recover non-recurring costs of EMD and Production incurred by the Participants under the MIDS Program. The SC will determine the amount of such levy on a case-by-case basis. The EMD portion of such levies will be allocated to the Participants based upon EMD common cost contribution percentages:

French Participant:	26.5%
Italian Participant:	18%
German Participant:	7.5%
Spanish Participant:	7%
U.S. Participant:	41%

The Production portion of such levies will be allocated to the Participants on the basis of their contributions to the non-recurring costs in the Production Phase. Any Participant may reduce or waive the assessment or collection of its share of the levy. In accordance with paragraph 5.11. of this Supplement, the Contracting Officer will include clauses in Program prime contracts to put into effect the provisions of this Section, with the requirement that any subcontracts placed in consequence thereof will contain similar clauses.

6.8. This Supplement creates no rights for the Participants to recover levies on procurement of MIDS-LVT Equipment for use by a Participant.

6.9. The Participant or contractor making a Third Party sale of a platform or system in which MIDS-LVT has been or will be integrated will designate the production source of the MIDS-LVT Equipment. For other Third Party sales, including subsequent upgrades to previously sold platforms or systems the production source will be determined by the respective buyer.

SECTION 7

INFORMATION TRANSFERS AND RIGHTS

7.1. All Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this MIDS Production Phase. Use of Foreground Information for Defense Purposes does not include the right to sell or transfer such information to non-Participants. All sales and transfers of Foreground Information will be in accordance with Section 6 (Third Party Sales and Transfers). Information transfer and rights will be in accordance with Section 8 (Information Transfers and Rights) of the PMOU. The nature and amount of Program Information to be acquired will be consistent with the objectives stated in Section 2 (Objectives and Scope of Work).

7.2. Patents

- 7.2.1. Where a Participant(s) owns title to a Program Invention, or has the right to receive title to a Program Invention, that Participant(s) will consult with the other Participants regarding the filing of a Patent application for such Program Invention. The Participant which has or receives title to such Program Invention will, in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file on behalf of the Participant holding title, or its contractors, as appropriate, Patent applications covering that Program Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.
- 7.2.2. The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to Program Inventions.
- 7.2.3. The other Participants will acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Participants, throughout the world for Defense Purposes, any Program Invention.
- 7.2.4. Patent applications which contain Classified Information, to be filed under this Supplement, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.
- 7.2.5. Each Participant will notify the other Participants of any Patent infringement claims made in its territory arising in the course of work performed under the MIDS Production Phase. Insofar as possible, the other Participants will provide information available to them that may assist in defending the claim. Each Participant will be

responsible for handling all Patent infringement claims made in their territories, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in the same manner as costs in paragraph 4.3.2.

- 7.2.6. The Participants will, in accordance with their national laws and regulations, give their authorization and consent for all use and manufacture in the course of work performed under the MIDS Production Phase of any invention covered by a Patent issued by their respective countries.

SECTION 8

LIABILITY AND CLAIMS

8.1. For liability arising out of the performance of this Supplement 3, the following provisions will apply:

8.1.1. Each Participant waives all claims against the other Participants in respect to damage caused to its military or civilian personnel or damage caused to its property by personnel or agents (which do not include contractors) of another Participant. If, however, such damage results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant, its personnel or agents, the costs of any liability will be borne by that Participant alone.

8.1.2. Claims from any other persons for damage of any kind caused by one of the Participant's personnel or agents will be processed by the most appropriate Participant, as determined by the Participants. The cost incurred in satisfying such claims will be borne by the Participants in the same manner as costs in paragraph 4.3.2. If, however, such liability results from the reckless acts or reckless omissions, willful misconduct or gross negligence of a Participant's personnel or agents, the costs of any liability will be borne by that Participant alone.

8.2. In the case of damage caused by or to common property of the Participants, where the cost of making good such damage is not recoverable from any other persons, such cost will be borne by the Participants in the same manner as costs in paragraph 4.3.2.

8.3. The Participants will not indemnify contractors against liability claims from any other persons. However, in exceptional circumstances (e.g. certain nuclear or unduly hazardous activity where the cost of insurance is excessively high), the Participants may consider whether to indemnify contractors against liability claims from any other persons.

8.4. Claims arising under any contract awarded under this Supplement will be resolved in accordance with the provisions of the contract.

SECTION 9

ADMISSION OF NEW PARTICIPANTS AND OBSERVERS

9.1. For purposes of this Supplement, Section 14 (Participation of Additional Nations) of the PMOU is hereby superseded and replaced in its entirety by the following provisions.

9.2. Should a prospective participant seek to join the Program, the Participants will consult together and unanimously establish reasonable and equitable conditions for such participation which will include compensation to the Participants for development costs incurred to date and provisions to safeguard adequately Program Information rights belonging to the Participants. The admission of a new participant will be the subject of a separate arrangement signed by all the Participants.

9.3. Applications from defense establishments of other nations or NATO organizations to participate as observers will be made to the Participants. Observer status will be granted by the Participants in accordance with conditions laid down by the SC. Such status will not include voting rights. Access to and safeguarding of Program Information will be in accordance with the provisions of the PMOU and this Supplement.

SECTION 10

SECURE DATA UNIT

10.1. In conformance with the COMSEC MOAs and with appropriate program funds, the U.S. COMSEC Authority will take the necessary steps to provide, within specified channels, COMSEC materials for terminals to be produced in this phase, and electrical and physical interface data necessary for the production, fielding, and logistics support of MIDS-LVT.

10.2. The Participants will ensure that there are complementary MOAs describing the management of security issues during the Production Phase.

SECTION 11

WITHDRAWAL, TERMINATION

11.1. Withdrawal of a Participant from the MIDS Production Phase will be in accordance with Section 16 (Withdrawal and Termination) of the PMOU. The notification period for withdrawal from the MIDS Production Phase will be six months from receipt of notification by the SC Chairperson.

11.2. Termination of this Supplement will be in accordance with Section 16 (Withdrawal and Termination) of the PMOU. In the event the Participants consent to terminate this Supplement, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable provisions.

11.3. The respective rights and responsibilities of the Participants regarding Section 6 (Third Party Sales and Transfers), Section 7 (Information Transfers and Rights) and Section 8 (Liability and Claims) will continue notwithstanding termination of, withdrawal from, or expiration of this Supplement.

SECTION 12

LANGUAGE, ENTRY INTO EFFECT AND DURATION

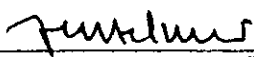
12.1. This MIDS Production Phase Supplement to the MIDS PMOU, which consists of the Introduction and twelve Sections, is written in the English and French languages, each text being equally authentic.

12.2. This Supplement will enter into effect upon the date of the last signature.

12.3. This Supplement will remain in effect for nine years. For the purposes of this Supplement, the termination date for the PMOU, specified in paragraph 16.4 of the PMOU, is hereby extended three years to 4 October 2009.

IN WITNESS WHEREOF, the undersigned, being duly authorized have signed this Supplement.

FOR THE MINISTER OF DEFENCE OF
THE FRENCH REPUBLIC


Signature

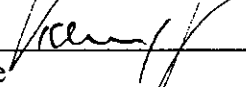
Jean-Yves HELMER
Name

le Délégué Général pour l'Armement
Title

15 MAI 2000
Date

Paris
Location

FOR THE FEDERAL MINISTRY OF
DEFENCE OF THE FEDERAL
REPUBLIC OF GERMANY


Signature

Ministerialdirektor
Dr. Jörg Wsempf
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Hauptabteilungsleiter Rüstung
BMVg

Postfach 13 28
Title
53003 Bonn

5. 12. 00
Date

Bonn
Location

FOR THE MINISTRY OF DEFENCE OF
THE ITALIAN REPUBLIC

Signature

Name

IL SEGRETARIO GENERALE DELLA DIFESA
E

Title

DIRETTORE NAZIONALE DEGLI ARMAMENTI
(Gen. Alberto ZIGNANI)

Date

19 GIU. 2000

Location

ROMA

FOR THE SECRETARY OF DEFENSE OF
THE UNITED STATES OF AMERICA

Signature

J. S. Gansler

Undersecretary of Defense
(Acquisition and Technology)

10 May 2000

Washington, DC

FOR THE MINISTER OF DEFENCE OF
THE KINGDOM OF SPAIN

Signature

Name

Miguel Valverde Gómez

Title

Date

24 NOV 2000

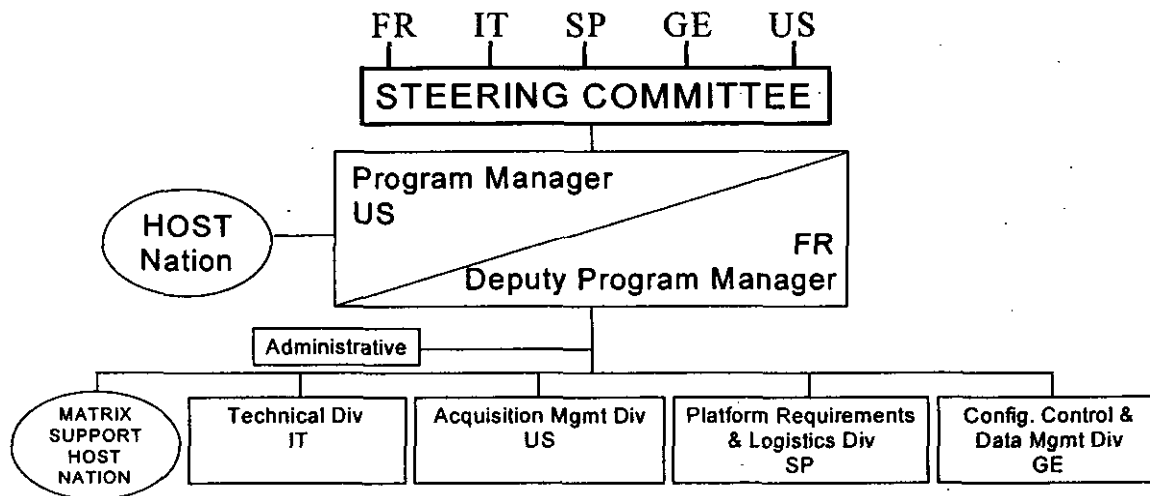
Location

MADRID



ANNEX A

MIDS-LVT CONCEPTUAL PROGRAM ORGANIZATION



ANNEX B

ESTIMATED MIDS-LVT PRODUCTION REQUIREMENTS

PARTICIPANT	TOTAL	%
France	431	15.9
Germany	142	5.2
Italy	356	13.2
Spain	113	4.2
USA	1665	61.5
TOTAL	2707	100.0